

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KATHRYN E. WOLVERTON, et al.,

Plaintiffs,

v.

HSBC BANK USA, N.A., et al.,

Defendants.

2:10-CV-1987 JCM (LRL)

Date: N/A

Time: N/A

ORDER

Presently before the court is defendants HSBC Bank U.S.A, N.A, HSBC Mortgage Corp. U.S.A, Merscorp, Inc, and Mortgage Electronic Registration Systems, Inc.'s (hereinafter "MERS") motion to dismiss and for release of lis pendens. (Doc. #4). Plaintiffs Kathryn E. Wolverton, Deborah Greene, and Michael Greene filed an opposition. (Doc. #10). Defendants filed a reply. (Doc. #11).

The present litigation stems from the foreclosure of property located at 230 W. Highland Drive, Henderson, NV 89015. Plaintiffs obtained an adjustable rate note from MortgageIT in the amount of \$1,000,000.00, secured by a deed of trust, in February of 2007. This deed of trust is at issue in the plaintiffs' present complaint.

In the defendants' motion to dismiss (doc. #4), they assert that this very same deed of trust and property have been the nucleus of two actions that the court previously dismissed. As defendants' assert, plaintiff Wolverton originally brought her complaint in August of 2008 (Case No.

1 2:08-cv-01168-JCM-RJJ). This case was dismissed *with prejudice* pursuant to a stipulation between
2 the parties in July of 2009. (Doc. #4-1). The property was then sold to HSBC on October 22, 2009.
3 (Doc. #4-23).

4 Subsequently, plaintiffs collectively filed another complaint on March 8, 2010 (Case No.
5 2:10-cv-00700-PMP-PAL), naming several defendants, including MERS, that were named in the
6 previous complaint. (Doc. #4-24). The case, which was almost identical to the 2008 case, was
7 dismissed with prejudice on July 19, 2010, based on both estoppel grounds and substantive issues.
8 (Doc. #4-2). A motion to set aside this order was filed (doc. #4-27) by the plaintiffs, but was denied
9 on September 29, 2010. (Doc. #4-28).

10 Finally, less than two weeks later, on September 29, 2010, plaintiffs filed yet another
11 complaint which is identical to the complaint filed in March of the same year. The present complaint,
12 which was filed in the above captioned case, contains the *same parties* and *same claims* as the case
13 that was dismissed with prejudice in July (doc. #4-2).

14 Defendants assert that the present complaint should be dismissed as well, due to the fact that
15 the claims have already been adjudicated. The principal of res judicata bars a plaintiff from
16 reasserting claims that have already been adjudicated. *Clark v. Bear Stearns & Co.*, 966 F.2d 1318,
17 1320 (9th Cir. 1992); *McClain v. Apodaca*, 793 F.2d 1031, 1033 (9th Cir. 1986). Further, claims
18 based on the same “transactional nucleus of facts” which “could have been asserted, whether they
19 were or not, in a prior suit between the same parties” are barred under res judicata. *Costantini v.*
20 *Trans World Airlines*, 681 F.2d 1199, 1201-02 (9th Cir. 1982).

21 Here, not only have the same defendants been named in previous cases, but the very same
22 claims and identical complaint have been previously dismissed. Both the 2008 complaint and the
23 March 2010 complaint stemmed from the same property and “transactional nucleus of facts” as the
24 present litigation. *Id.* Not only was the exact same complaint dismissed in July of 2010 (doc. #4-2),
25 but any new claims the plaintiffs may wish to add to their present complaint by amending it, as they
26 assert they can, “could have been asserted” in either of the prior suits, and are barred under res
27 judicata. *Id.*

1 Accordingly,

2 IT IS HEREBY ORDERED ADJUDGED AND DECREED that defendants HSBC Bank
3 U.S.A, N.A, HSBC Mortgage Corp. U.S.A, Merscorp, Inc, and Mortgage Electronic Registration
4 Systems, Inc.'s motion to dismiss (doc. #4) be, and the same hereby is, GRANTED.

5 IT IS FURTHER ORDERED that the above captioned case (Case No. 2:10-cv-01987-JCM
6 -LRL) be, and same hereby is, DISMISSED with prejudice.

7 IT IS FURTHER ORDERED that the defendants' request for release of lis pendens (doc. #4)
8 be, and the same hereby is, GRANTED.

9 DATED this 31st day of January, 2011.

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12 UNITED STATES DISTRICT JUDGE